IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.4420 OF 2004

Shri.Shivaji Rau Chavan
and others ..Petitioners

Vs.

Jagannath Maruti Shinde and
others ..Respondents

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Mr.S.B.Deshmukh for Mr.Anil V.Anturkar for Petitioners

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CORAM : B.H.MARLAPALLE,J.
DATE : FEBRUARY 7,2005

P.C.:

1. In Regular Civil Appeal No. 58 of 1996, an application Exhibit-41 came to be filed almost after eight years on 22.1.2004 praying that the Commissioner who had submitted his report in the year 2003 was required to be called for cross-examination. By the impugned order dated 10.2.2004 this application came to be rejected by the learned Ad-hoc Addl. Dist. Judge at Satara.

2. The lower appellate Court noted that there are two appeals pending between the same parties i.e. R.C.A.No. 531 of 1992 and 58 of 1996 in respect of the same suit properties. Several adjournments were taken on some or other pretext including the ground

that the interlocutory orders are required to be challenged before this Court. The reasoning of ill-helth was also advanced to seek adjournments. At the same time, the map on the record was available, wherein, the boundaries of the suit property were fixed by the Commissioner and therefore, it was not necessary to call the Commissioner for cross examination. During the hearing of the appeal, the lower appellate Court noted that in case, it comes to the conclusion that the Court Commissioner should be examined or some additional evidence was required, it could remand the matter to the trial Court for recording evidence afresh. The learned counsel for the petitioner placed reliance on the decision of the Kerala High Court in the case of *State of Kerala Vs. Kottammal Mammeeriyakutty and others reported in A.I.R. 1985 Kerala 109.* The trial Court held that the facts in the instant case were different and therefore, the said decision was not applicable.

3. The view taken by the Court below cannot be termed as manifestly erroneous so as to call for interference under Article 227 of the Constitution of India. Petition is therefore, rejected summarily.

[B.H.MARLAPALLE,J.]